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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**
6

7 STEVEN PRESCOTT, et al.,

8 Plaintiffs,

9 v.

10 NESTLE USA, INC.,

11 Defendant.

Case No. 19-cv-07471-BLF

**ORDER RE MOTION TO DISMISS
THE COMPLAINT**

[ECF 10, 11]

12 Plaintiffs Linda Cheslow and Steven Prescott bring this putative class action against
13 Defendant Nestle USA, Inc. (“Nestlé”) and ten Doe defendants. *See* ECF 1, 13. Before the Court
14 is Nestlé’s motion to dismiss the Complaint, which Nestlé filed on December 4, 2019. *See* ECF 10,
15 11. Instead of filing an opposition, Plaintiffs filed an Amended Complaint (“FAC”) on January 22,
16 2020. ECF 13. Pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), however, Plaintiffs’
17 deadline to amend its complaint as of right was December 26, 2019. Accordingly, Nestlé asks the
18 Court to strike the FAC and grant its motion to dismiss as unopposed. ECF 14 (“Reply”) at 1.
19 Plaintiffs object. ECF 21 at 1-2. They point out that the parties had stipulated to, *inter alia*, an
20 extension of the deadline for Plaintiffs to “respond” to Nestlé’s motion to dismiss, which Plaintiffs
21 believe covers a response in the form of an amended complaint. *Id.* (quoting ECF 6, citing ECF
22 12). And indeed, the FAC does not appear to add new claims or parties, but rather to respond to the
23 deficiencies argued in the motion to dismiss.

24 In the interest of efficiency, and because Plaintiffs’ actions appear to have resulted from a
25 lack of clarity regarding the scope of the parties’ stipulation, the Court accepts the FAC as the
26 operative complaint under Federal Rule of Civil Procedure 15(a)(2). The motion to dismiss the
27 original Complaint is therefore TERMINATED as moot. Defendants’ deadline to respond to the
28 FAC is **Friday, February 28, 2020**. The parties are advised to be more precise in their future

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stipulations.

Having resolved the instant motion to dismiss, the motion hearing currently set for February 27, 2020 is hereby VACATED. The Case Management Conference remains as set.

IT IS SO ORDERED.

Dated: February 14, 2020


BETH LABSON FREEMAN
United States District Judge